

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION**

GORSS MOTELS, INC., individually and on	)	
behalf of a class of similarly-situated persons,	)	
	)	No. 1:16-cv-00330-HAB
Plaintiff,	)	
v.	)	
	)	
BRIGADOON FITNESS, INC., BRIGADOON	)	
FINANCIAL, INC., and JOHN DOES 1-5,	)	
	)	
Defendants.	)	

**PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

Plaintiff, Gorss Motels, Inc. (“Plaintiff” or “Gorss”) respectfully moves this Court, pursuant to Fed. R. Civ. P. 56(a) and N.D. Ind. L.R. 56-1, for an order granting Plaintiff summary judgment on its individual claims against Defendants Brigadoon Fitness, Inc. and Brigadoon Financial, Inc. (“Defendants” or “Brigadoon”), and that the Court award Plaintiff \$500 in statutory damages. As argued in the accompanying Memorandum, Plaintiff is entitled to summary judgment against Brigadoon on its individual claim under the Telephone Consumer Protection Act of 1991 (“TCPA”), 47 U.S.C. § 227(b)(1)(C), for the following reasons:

First, the fax sent to Plaintiff on April 17, 2013 (the “Fax”) is “advertisement” under the TCPA, 47 U.S.C. § 227(a)(5), and the implementing rules issued by the Federal Communications Commission (“FCC”), 47 C.F.R. § 64.1200(f)(1).

Second, the Fax was sent to Plaintiff’s stand-alone fax machine over Plaintiff’s subscribed fax line by Brigadoon through its retained fax broadcaster WestFax, Inc., using a “telephone facsimile machine, computer, or other device . . . .” 47 U.S.C. § 227(b)(1)(C).

Third, Brigadoon is the “sender” of the Faxes under 47 C.F.R. § 64.1200(f)(10).

Fourth, Brigadoon has the burden of proving that it obtained Plaintiff's "prior express invitation of permission" to send the Fax, and it cannot carry that burden.

WHEREFORE, for the reasons in the accompanying Memorandum of Law and Statement of Material Facts, Plaintiff respectfully requests that the Court enter summary judgment in favor of Plaintiff and against Brigadoon in the amount of \$500.

Dated: March 31, 2020

Respectfully submitted,

Gorss Motels, Inc.,

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